

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AXIS CONSTRUCTION CORP. : CIVIL ACTION  
Plaintiff :  
v. :  
LANDMARK BUILDING SYSTEMS, :  
INC., et al. : NO. 02-3017  
Defendants/Third Party Plaintiffs :  
v. :  
PIONEER WINDOWS, INC., et al. :  
Third Party Defendants :

## ORDER

AND NOW, this                day of                , 2002, upon consideration  
of the Motion of Defendant and Third Party Plaintiff, Landmark Building Systems, Inc.,  
for Enlargement of Time of the Court's Trial Scheduling Order entered November 18,  
2002, it is hereby ORDERED that said Motion be and here by is GRANTED and that the  
deadlines set forth in this Court's Scheduling Order shall be extended by sixty (60) days.

BY THE COURT:

Berle Schiller, U.S.D.J.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AXIS CONSTRUCTION CORP.	:	CIVIL ACTION
Plaintiff	:	
v.	:	
LANDMARK BUILDING SYSTEMS,	:	
INC., et al.	:	NO. 02-3017
Defendants/Third Party Plaintiffs	:	
v.	:	
PIONEER WINDOWS, INC., et al.	:	
Third Party Defendants	:	

**MOTION OF DEFENDANT, LANDMARK BUILDING SYSTEMS, INC.,  
FOR ENLARGEMENT OF TIME OF  
TRIAL SCHEDULING ORDER FOR CAUSE**

Defendant and Third Party Plaintiff, Landmark Building Systems, Inc.

(“Landmark”) hereby moves this Court for Enlargement of Time on its Trial Scheduling Order of November 18, 2002 for cause as follows:

1. Landmark is a subcontractor to Plaintiff, Axis Construction Corp. (“Axis”) to manufacture and supply modular building classroom units to two schools for a School District in Nassau County, Long Island known as the Plainedge Project.

2. During the course of 2001, a series of disputes arose between Axis and Landmark concerning payment due to Landmark for modular classroom units which it manufactured and provided to Axis.

3. As a result, on December 18, 2001, Landmark and Axis entered into a Settlement and Escrow Agreement calling for the release of funds to Landmark upon completion of various milestones for Landmark's work on the Plainedge Project.

4. Axis originally brought this case to set aside the terms of that Settlement and Escrow Agreement on January 18, 2002, only one (1) month after it entered into the agreement with Landmark and before work on the Plainedge Project had even been completed.

5. Axis never notified Landmark of that suit, however, or served it with a copy of its original Complaint, as a result of which the action was dismissed, without prejudice, in May, 2002, following which Axis immediately recommenced the suit under the above caption and docket number, once again, before work on the Plainedge Project had been completed.

6. As Axis' claims against Landmark involved three (3) of Landmark's subcontractors for the projects that it performed for Axis, Landmark joined Town Supply Company, Inc. ("Town"), Pioneer Windows, Inc. ("Pioneer") and Hummer Equipment Co., Inc. ("Hummer") as Third Party Defendants to this action.

6. A scheduling conference was held before the Honorable Judge Berle Schiller of this Court on August 22, 2002, following which the case was referred to U.S. Magistrate Judge Jacob P. Hart to sort out and attempt to settle the claims among the various parties to the case.

7. An initial settlement conference was held before the Honorable Judge Hart on October 17, 2002, following which the parties were directed to return with their principals on October 22, 2002.

8. On October 22, 2002, with the assistance of Judge Hart, the parties worked out an interim settlement agreement under which sums would be released from the escrow to pay disputed claims of Landmark's subcontractors and to negotiate terms for Pioneer to return and perform corrective work, following which those Third Party Defendants would be dismissed from this litigation.

9. At that time, the parties represented to the Court that, once all of the subcontractor claims had been dismissed, any remaining disputes between Axis and Landmark would be referred to common law arbitration before an arbitrator experienced in the resolution of construction disputes.

10. Following that interim settlement agreement, claims of Town, Hummer and Pioneer have been wholly or partially addressed and resolved.

11. At this point, Hummer has been dismissed as a Third Party Defendant to this case, Pioneer is under a written settlement agreement which will cause its dismissal as a party Defendant upon completion of various work and a settlement has been reached as to the amount of payment to be made to Town but not as to the source of those funds.

12. At the time that agreement with Pioneer was being negotiated, however, the parties held a conference call with the Honorable Jacob Hart on November 15, 2002 concerning payment of minor sums for corrective work which were in dispute at that time, at which point Judge Hart concluded the case could not be settled and referred the matter back to Judge Schiller.

13. This Court therefore issued a Scheduling Order on November 18, 2002, which directed the parties to complete discovery by the end of December, 2002 and to prepare the case for a jury trial on Monday, March 24, 2003. A true and correct copy of said Scheduling Order is attached hereto as Exhibit "A".

14. As indicated above, after that conference call and the Court's Scheduling Order was issued, the parties continued to work together and resolved the remaining dispute as to payment for Pioneer's corrective work, which resulted in a signed Settlement Agreement on November 22, 2002 calling for various corrective work to be completed by Pioneer and the release of payment for Pioneer's work from the escrow fund following its completion and Pioneer's warranty of its work.

15. Judge Hart was informed of the continuing efforts of the parties to resolve this case in accordance with the interim Settlement Agreement negotiated with the Court as of October 22, 2002.

16. It was therefore the understanding of the parties and Judge Hart that, once the Pioneer settlement had been concluded, the remaining disputes between Axis and Landmark would be referred to a common law arbitration.

17. On December 16, 2002, however, Axis served notices of deposition of the principals of Landmark, notwithstanding its previous consent to refer all remaining claims between Axis and Landmark to common law arbitration.

18. At a conference call with Judge Hart on December 19, 2002, Axis informed the Court and the parties, for the first time, that it would not proceed with arbitration but intended to undertake discovery and proceed to trial in this case.

19. As a result of the previous representations made by Axis concerning its willingness to consent to arbitration, however, Landmark has not taken any discovery to date on backcharges which Axis seeks to enforce against Landmark which exceed \$200,000.00.

20. These backcharges are complex and little or no back up information or documentation has ever been furnished by Axis to support its claim for those backcharges.

21. Under the Court's Scheduling Order of November 18, 2002, the discovery deadline for this case will expire on December 31, 2002.

22. Landmark requests enlargement of the Court's deadlines set forth in its Scheduling Order in the amount of sixty (60) days in order to obtain and review the back

up documentation for Axis' backcharges which is necessary to conduct adequate depositions of Axis' representatives as to the basis and amounts of those backcharges.

23. As Landmark had no previous notice that Axis would renege on its consent to submit this matter to arbitration before December 19, 2002 and that Axis would demand a trial on its claims against Axis in this case, there is adequate cause for a brief enlargement of sixty (60) days of the deadlines set forth in this Court's Scheduling Order of November 18, 2002.

24. This is the first enlargement of time on this Court's Scheduling Order which has been requested by Landmark and no prejudice will be caused to the parties in the event that enlargement is granted by this Court.

WHEREFORE, Defendant and Third Party Plaintiff, Landmark Building Systems, Inc., hereby respectfully requests an enlargement of time on this Court's Scheduling Order of November 18, 2002 in the amount of sixty (60) days.

FRANCIS X. CLARK, P.C.

DATE:

By: \_\_\_\_\_  
Francis X. Clark

Attorneys for Defendant and  
Third Party Plaintiff,  
Landmark Building Systems, Inc.

**CERTIFICATE OF SERVICE**

I, Francis X. Clark, hereby certify that I have served a true and correct copy of the foregoing Motion upon counsel of record this date by first-class mail, postage prepaid, addressed as follows:

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DATE:

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Francis X. Clark